# DA - Police Insurance

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Radley Balko and John Rappaport, 05/01/16

Balko runs “The Watch” a criminal justice blog for the Washington Post, he is also a published author on issues of criminal justice. Rappaport is a professor of law at the University of Chicago.“How the insurance industry could reform American policing”, The Washington Post. https://www.washingtonpost.com/news/the-watch/wp/2016/03/01/how-the-insurance-industry-could-reform-american-policing/

This part of the argument is a little bit speculative, but I think it’s worth considering. My claim isn’t that insurers have some consciously developed master plan for the evolution of Fourth Amendment law, but that their natural pursuit of their long-term interests may, over time, tend to push the law in certain directions. But to entertain the spirit of your question and speculate a little: I think insurers would favor clear rules rather than vaguer standards like “reasonable under the totality of the circumstances.” Fourth Amendment doctrine contains a fair amount of the latter, but it’s tempered by qualified immunity doctrine, which shields the police (and thus their insurers) from the financial consequences of Fourth Amendment violations that weren’t “clearly established” before the fact. So I would expect insurers to be big proponents of qualified immunity. One proposal I’ve often seen in the police reform debate is to end both qualified immunity and indemnification for individual police officers, and instead **requiring them to purchase liability insurance**. Based on your research for this paper, what do make of that idea? I’ve seen these proposals too, and I’m not totally sure what to make of them. One thing that worries me is this: Individual police officers would be really small-time customers for insurance companies; their premiums would be too small to justify much hands-on loss-prevention work. (To see the point, think about how your homeowner’s insurer doesn’t really do very much — they don’t come inspect your home and recommend changes or anything like that. But the company that insures a skyscraper definitely does. I worry that the same will be true in policing.) I also wonder just how much financial burden we’re really willing to have police officers take on. I understand the point to be that officers who commit misconduct will have to pay higher rates. But what will we do when officers start quitting because their rates are too high? And what steps will we take to ensure that municipalities are not essentially compensating officers for their premiums under the table, and thereby neutralizing whatever positive incentives we’d hope the insurance premiums would create? Incidentally, there is a market for individual policies for federal law enforcement officers, but only federal. I’m not completely sure why — it may have something to do with the absence of unions at the federal level, but I’m not sure. The federal government pays half of the premiums. It seems like the main lessons here are for smaller and medium-sized cities. Is there any way to create the same incentives for insurance-driven reform in the larger cities that mostly self-insure? The lessons about “what is” do concern smaller and medium-sized cities — which, by the way, does encompass most American municipalities. As one insurer put it to me, the United States is a “country of small towns.” But the lessons for “what ought to be” extend to big cities too. Policing is an inherently risky activity. We know some things about how to manage that risk from an insurer’s perspective. But scholars who have studied in-house risk management in big city police departments, like Joanna Schwartz and Carol Archbold, have found that many cities aren’t doing much. Perhaps states could require municipalities that fall short on risk management to purchase liability coverage on the market — a sort of “soft mandate” or “defeasible mandate.” But politicians and the public need to understand that spending some money up front on risk management could save a lot of money — not to mention lives — in the long run.

#### Less police increases crime – the mere presence is important even if they are not arresting.

Inimai M. Chettiar, 2015

Chettiar is the director of the Justice Program at New York University Law School’s Brennan Center. “More Police, Managed More Effectively, Really Can Reduce Crime”

Can simply adding more police officers to the streets, or changing the ways in which they operate, actually reduce the rate of crime? A report from the Brennan Center for Justice at NYU School of Law, [What Caused the Crime Decline?](https://www.brennancenter.org/publication/what-caused-crime-decline), provides an answer to this question. **Two specific approaches to policing really can bring down crime. First, increasing numbers of police officers can reduce crime.** Increased police in the 1990s brought down crime by about 5 percent (this could range from 0 to 10 percent). Police employment increased dramatically in the 1990s, rising 28 percent. One major contributor was the 1994 Crime Bill, which provided funding for 100,000 new local officers. A body of empirical research has found that simply having more officers on the streets, even if they are not arresting or stopping anyone, can be a crime deterrent.

#### Crime causes disproportionate psychological and physical violence – it creates dangerous cycles of poverty.

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BJS Statisticians. “Socio-emotional Impact of Violence Crime”, United States Department of Justice, Special Report. <https://www.bjs.gov/content/pub/pdf/sivc.pdf>

In 2009–12, **68% of victims of serious violent crime**—rape or sexual assault, robbery, or aggravated assault—**reported experiencing socio-emotional problems as a result of their victimization.** For this report, socio-emotional problems are defined as the experience of one or more of the following: feelings of moderate to severe distress; significant problems with work or school, such as trouble with a boss, coworkers, or peers; or significant problems with family members or friends, including more arguments than before the victimization, an inability to trust, or not feeling as close after the victimization. Victims who experienced severe distress as a result of a violent victimization were more likely to report the crime to police and receive victim services than victims with no distress or mild distress (figure 1). About 12% of severely distressed victims reported the crime to police and received victim services, compared to 1% of victims with no distress. However, more than a third of victims reporting severe distress and nearly half of those with moderate distress did not report to the police or receive any assistance from victim service providers. In addition, 50% of victims who experienced severe distress and reported to police did not receive victim services. It is not known if they were directed to or offered these services. This report presents findings on the relationship between the characteristics of violent incidents and victims and the experience of socio-emotional problems. In addition to physical injury and financial loss**, victims might experience high levels of emotional distress, increased relationship problems, and significant disruptions and problems at school or work.** The report also examines certain helpseeking behaviors of victims suffering from socio-emotional problems as a result of violent victimization. Data are from the Bureau of Justice Statistics’ (BJS) National Crime Victimization Survey (NCVS). The NCVS collects information on nonfatal crimes reported and not reported to police against persons age 12 or older from a nationally representative sample of U.S. households. Questions pertaining to the socio-emotional consequences of victimization were first added to the survey in July 2008. This report aggregates data during the 4-year period from 2009 to 2012, referred to throughout the report as 2009–12. **Aggregating data increases the reliability and stability of estimates and facilitates comparisons of detailed victimization characteristics.**

#### Insurance providers can spur reform. However, lack of loss-prevention incentives kills that pathway and without insurance policies police will just pay with taxpayer dollars.

Martin Kaste, 04/01/16

“When It Comes To Police Reform, Insurance Companies May Play A Role” <http://www.npr.org/2016/04/01/472564258/when-it-comes-to-police-reform-insurance-companies-may-play-a-role>

For all the talk in the last couple of years about reforming police, there are limits to what the government can do. But there may be another way, and it involves insurance companies. John Rappaport, an assistant law professor at the University of Chicago, says he spent years studying police reform before it dawned on him to ask a basic question: What were the insurance companies doing? "I just went on to Google and started searching and was just instantly amazed with the stuff I was finding," Rappaport says. It turned out insurers were trying to limit the liability of the police departments they cover. "One of the first things I found was this pamphlet from Travelers Insurance about how to do a strip search, and I just thought people in my world have no idea that this stuff is out there and it's really fascinating," Rappaport says. It was fascinating to him, because it seemed to offer a solution to a fundamental problem when it comes to reform: police departments usually don't feel the financial pain of a lawsuit. It's not the officers' personal money, obviously, and even the department budget is not usually at stake when somebody sues. If the city has liability insurance, on the other hand, the insurer does feel the pain — and it may try to do something to lessen it. "They look for ways to push police departments in a direction of reduced risk," Rappaport says. That's been the experience of William T. Riley III. When he was chief of police in Selma, Ala., he says the city's insurer made a point of getting together with him after a use-of-force incident to see what could be learned. "And one of the things that we did when we had somebody sue us or whatever is we went over it with a fine-tooth comb to see if there's some place that we fell short on," Riley says. Most of the time, the insurers' role is informational. They send out bulletins to police departments about the latest court precedents on, say, use of force. But some go further, paying for special training for the police departments. Steve Albrecht does that kind of training in California. "We're seeing forward-thinking chiefs and forward-thinking insurance companies that are working in partnership and I think that's a benefit. And I think if that's driven by the business part of that then so much the better to get the changes we need," Albrecht says. This kind of hands-on approach is most common with insurance pools, non-profit entities that cover groups of police agencies, especially in Western states. As membership organizations, they see it as part of their function to give advice to police departments. Commercial insurance companies, on the other hand, take a more market-oriented approach. "Ultimately, the way we can influence behavior does come down to price," says Tim McAuliffe, who's with a commerical insurer called Ironshore. He's actually a little dubious about this idea that insurance companies can promote reform. He says companies like his don't really get into the minutiae of recommending best practices or training to police departments. "They may do, like, a conference call if it was specific to a police incident. They may ask for a conference call with a police chief but that's generally as far as I've seen companies go," he says. **Still, insurers tend to understate their own influence, in part because they don't want to be seen as dictating policies to local law enforcement. Joanna Schwartz is a law professor at UCLA who studies how police manage liability, and she agrees with Rappaport that insurers can play the role of an honest broker to force a city to learn from its police department's mistakes. "They are highly motivated to reform because it affects their bottom line, and they're not constrained by any of the political counterforces that could prevent the city council or mayor from pushing hard on a law enforcement agency to reform," Schwartz says.**

## Nebraska Version

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#### Independently, limiting qualified immunity decreases active policing which increases crime – they act out of self-preservation rather than for the common good.

George Hofstetter. 2016. Proactive policing and the violent crime rate. Association of LA Deputy Sheriffs.

Director Comey received strong backlash from President Obama for similar remarks in 2015, when he linked the rise in violent crime to the "chill wind that has blown through American law enforcement over the last year." At that time, President Obama accused Comey of "cherry-picking data" and ignoring "the facts" on crime in pursuit of a "political agenda." However, statistics and interviews with police officers suggest Comey is exactly right. Proactive policing, which has proven to reduce crime and been a staple of modern American police work, is screeching to a halt across the country. The reason is because police officers are becoming increasingly risk averse. There is a direct correlation between the second guessing and protest of police officers and the disinclination of police to engage in proactive police work and avoid the risks inherent in actively engaging suspected criminals. Take, for example, the City of Minneapolis, which has been rocked for months by protests following the 2015 shooting of Jamar Clark , who attempted to take an officer's gun from him. Despite some bystanders' claims that Clark was handcuffed when shot, a four-month investigation found the shooting was justified, with evidence proving Clark was not handcuffed and did try to grab the officer's gun. Minneapolis, police were under intense public criticism in the months following the shooting and proactive police work plummeted. In the precinct where the Clark incident happened, police stops and contacts dropped 51% and arrests declined 45%. City-wide police contacts dropped 32%, and arrests decreased by the same amount. Officers told the local paper they were in "self-preservation mode," (aka career survival) responding to emergency calls, but not engaging in proactive policing. Said one veteran officer: "Confrontation equals getting indicted, put on the front page or [Chief] Harteau will bury you." The term "bury you" refers to the discipline meted out to officers sacrificed on the altar of public opinion to ease some executives and politicians lives. The same story is being repeated in other cities, where officers retreat from proactive policing and violence soars. In Chicago, where officers have been under the microscope since the Laquan McDonald shooting, investigative stops in 2016 plunged a staggering 80% over the same period the year before. "The officers are just having second thoughts about being aggressive," said a local professor of criminology. At the same time, violent crime has soared to a level not seen in years. On the heels of a nation-leading 468 homicides in 2015, 141 people were murdered in Chicago in the first three months of 2016, a 72% increase from the same period the year before. The violence continues unabated. Over the recent Mother's Day weekend, eight people were fatally shot and 43 others were shot and wounded. A similar situation has played out in Baltimore, where arrests plunged immediately after six officers were indicted in the death of Freddie Gray. Officers said they were afraid to do their jobs given the charges filed against their peers in Gray's death. In five of eight months following Gray's death and subsequent rioting, homicides topped 30 to 40 a month-levels not seen in years. Locally, we have seen some indications that the same trend is playing out here. Los Angeles Police Protective League President Craig Lally said officers would be hesitant to patrol proactively after the LA Police Commission found an officer at fault in the shooting death of a suspect, even though the suspect was proven by DNA evidence to have been wrestling for control of an officer's gun. That ruling was based on a misreading of both the Fourth Amendment and civil case law. But it left officers believing they would be unfairly scrutinized for doing police work resulting in suspects trying to disarm them! How could officers have confidence in a Police Commission whose president, a practicing (entertainment) attorney, dismissively rejected a request to participate in the LAPD Force Option Simulator training-stating that it would do him about as much good as it would LAPPL members learning how to write contracts for Oprah Winfrey. Writer "Jack Dunphy" , the pseudonym used by a retired LAPD officer who writes for national publications, recently penned a piece that examined what runs through an officer's mind when thinking of engaging in proactive police work: "Confirmed: Demoralized cops equal higher crime," he stated. Whether it be Dunphy's fictional account of a day on patrol, or the real-life statistics in Minneapolis, Baltimore and Chicago, FBI Director Comey has hit the nail on the head. The chill wind blowing through law enforcement in the United States has led to the end of proactive policing, with a rising violent crime rate left in its wake.

#### Crime causes disproportionate psychological and physical violence – it creates dangerous cycles of poverty.

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BJS Statisticians. “Socio-emotional Impact of Violence Crime”, United States Department of Justice, Special Report. <https://www.bjs.gov/content/pub/pdf/sivc.pdf>

In 2009–12, **68% of victims of serious violent crime**—rape or sexual assault, robbery, or aggravated assault—**reported experiencing socio-emotional problems as a result of their victimization.** For this report, socio-emotional problems are defined as the experience of one or more of the following: feelings of moderate to severe distress; significant problems with work or school, such as trouble with a boss, coworkers, or peers; or significant problems with family members or friends, including more arguments than before the victimization, an inability to trust, or not feeling as close after the victimization. Victims who experienced severe distress as a result of a violent victimization were more likely to report the crime to police and receive victim services than victims with no distress or mild distress (figure 1). About 12% of severely distressed victims reported the crime to police and received victim services, compared to 1% of victims with no distress. However, more than a third of victims reporting severe distress and nearly half of those with moderate distress did not report to the police or receive any assistance from victim service providers. In addition, 50% of victims who experienced severe distress and reported to police did not receive victim services. It is not known if they were directed to or offered these services. This report presents findings on the relationship between the characteristics of violent incidents and victims and the experience of socio-emotional problems. In addition to physical injury and financial loss**, victims might experience high levels of emotional distress, increased relationship problems, and significant disruptions and problems at school or work.** The report also examines certain helpseeking behaviors of victims suffering from socio-emotional problems as a result of violent victimization. Data are from the Bureau of Justice Statistics’ (BJS) National Crime Victimization Survey (NCVS). The NCVS collects information on nonfatal crimes reported and not reported to police against persons age 12 or older from a nationally representative sample of U.S. households. Questions pertaining to the socio-emotional consequences of victimization were first added to the survey in July 2008. This report aggregates data during the 4-year period from 2009 to 2012, referred to throughout the report as 2009–12. **Aggregating data increases the reliability and stability of estimates and facilitates comparisons of detailed victimization characteristics.**

## 2NR

### Overview

#### Status-quo insurance policies for police departments are based in department wide plans which cover entire municipalities. The lynchpin for this model is qualified immunity which screens most frivolous lawsuits and makes police-policies worthwhile for companies – that’s our Balko and Rappaport 05/01 evidence.

#### The plan tanks the status-quo setup – limiting qualified immunity makes it impossible. We’ll isolate two specific implications:

#### Rates will skyrocket which causes officers to quit because they can’t pay or less police are hired – that has an external impact of cutting down numbers of police which increases crime – that’s our Chettiar evidence – it outweighs the case because it ensures the cycles of poverty in disadvantaged parts of cities causing both psychological and physical violence which are the root cause and barrier for change in relationship to their impact because it causes lifelong damages that effect all parts of society including personal well-being, intrapersonal relationships, and disposition towards community– that’s Langton and Truman.

#### Civil suits will enable suing of specific officers which requires individual plans – group plans won’t cut it anymore. That kills loss-prevention incentives – current insurance companies will help manage departments – they offer to reduce payments if new tech such as body cameras are implemented. Which a particularly key model because it dodges internal politics within police departments. Insurance companies won’t do that with individual officers because their premiums are too small to put a dent in their bottom lines. That crashes external forces that are pushing for reform which turns the case –that’s our Kaste 04/01/ evidence.

### A2: Uniqueness

#### Our Balko and Rappaport evidence is an analysis from this year based in the relationships the municipalities have to their insurers now – proves our uniqueness claim.

#### Kaste evidence indicates that insurance companies are prompting reform in the status quo – that proves UQ – it’s happening now. That evidence is from April of this year.

### A2: Self-Insure

#### Our Balko and Rappaport evidence indicates a majority of police departments are medium to small – that still triggers our impacts for millions of people. Their defense only applies to places like Chicago, New York, and otherwise.